

Nixon Peabody LLP
Attorneys at Law**RECEIVED**
CENTRAL FAX CENTER Suite 900
401 9th Street, N.W.
Washington, D.C. 20004-2128
(202) 585-8000MAY 03 2004
OFFICIAL

Fax: (202) 585-8080

PRIVILEGE AND CONFIDENTIALITY NOTICE

The information in this fax is intended for the named recipients only. It contains privileged and confidential matter. If you have received this fax in error, please notify us immediately by a collect telephone call to (202) 585-8000 and return the original to the sender by mail. We will reimburse you for postage. Do not disclose the contents to anyone. Thank you.

FAX

To:	Company	Fax #:	Telephone #:
1) SPE Gutierrez	Art Unit 2859	571-273-2245	571-272-2245
2)			
3)			
4)			
5)			

INTERNATIONAL PHONE NUMBERS MUST INCLUDE COUNTRY & CITY CODE. SEE LOCAL WHITE PAGES FOR CODES NEEDED.

From: Jerome Massie	Date: May 3, 2004	No. of Pages: 23 (including this page)	Application No.: 09/924,870
----------------------------	--------------------------	--	------------------------------------

Mr. Gutierrez,
Per my telephone voice mail call regarding this application earlier today, please find attached, a copy of our records from the above identified application since October 15, 2003, which clearly indicates that the pursuant to communications from the USPTO and Examiner Guadalupe that not only has the finality of the Office Action of August 8, 2003 has been withdrawn, but also, that Examiner Guadalupe in a telephone conference of December 10, 2003 has indicated that the Advisory Action of December 4, 2003 will be removed, i.e. "un-issue". In a telephone call on April 30, 2004, Examiner Guadalupe insisted that we file a paper to place the application in proper status, but was reluctant to advise as to what type or content of that paper should be. It was noted to the Examiner that the Applicants have already filed such a paper in the Petition to withdraw the finality which was granted October 15, 2003!! It is respectfully requested that you take what measures are necessary to:

- 1) promptly correct the application status in PAIR records to show that the application is in the "non-final" status, as well as "forwarded to the Examiner" status for action, per the Decision on Petition,
- 2) send a letter to the Applicants withdrawing the improper Advisory Action of December 4, 2003, and,
- 3) most importantly, instruct the Examiner to consider the Amendment filed October 28, 2003 which should have been considered by the Examiner nearly five (5) months ago.

If necessary, please consider this transmission a petition under Rule 1.181 (no fee).

Your prompt attention to this matter would be greatly appreciated.

Jerome Massie
Jerome Massie, Reg. No. 48,118
(202) 585-8219

☐ First Class Mail
☐ Overnight Mail
☐ Hand Delivery
☐ This transmission will be the only form of delivery of this document

IF YOU DO NOT RECEIVE ALL OF THESE PAGES, PLEASE CONTACT THE FAX OPERATOR AS SOON AS POSSIBLE AT: (202) 585-8000. THANK YOU.

To:	Company	Fax #:	Telephone #:
1) SPE Gutierrez	TC Art Unit 2859	571-273-2245	571-272-2245

INTERNATIONAL PHONE NUMBERS MUST INCLUDE COUNTRY & CITY CODE. SEE LOCAL WHITE PAGES FOR CODES NEEDED.

From: Jerome Massie	Date: May 3, 2004	No. of Pages: 23 (including this page)	Client/Matter: 741124-77
User #: 2039	Ext: 8219	Disbursement Amount: \$	

NVA294976.1

MAY. 3. 2004 1:42PM

NIXON PEABODY

NO. 2908 P. 2

Nixon Peabody LLP

Office Memorandum

**RECEIVED
CENTRAL FAX CENTER**

MAY 03 2004

OFFICIAL

TO: File
FROM: Kate McManus
DATE: December 10, 2003
RE: 741124-77

Talked to Examiner Guadalupe on December 10, 2003 concerning the Advisory Action that she issued on December 4, 2003, she will do what is necessary to un-issue the Advisory Action. She said to ignore the Advisory Action.



MAY. 3. 2004 1:43 PM ES FAX NIXON PEABODY

UNITED STATES DEPT. OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22312-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,870	08/09/2001	Dieter Busch	741124-77	3696
22204 7590 12/04/2003				
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128				
RECEIVED DEC 8 2003 NIXON PEABODY				
EXAMINER GUADALUPE, YARITZA				
ART UNIT 2859 PAPER NUMBER				
DATE MAILED: 12/04/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO 90C (Rev 10/03)

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 October 2003. FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 708.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.138(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-8.

Claim(s) withdrawn from consideration: 9-16 and 18-20.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Diego Gutierrez

MAY. 3. 2004 1:43PM NIXON PEABODY

NO. 2908 P. 5

Continuation of 2. NOTE: The proposed Amendment is considered to raise new issues because claims 18 - 20, as now presented, includes limitations, i.e., attaching the position measurement probe to the end face of the mounted body, and means for attaching the position measurement probe to an end face of the cylindrical body, limitations that were not present in the finally rejected claims or were withdrew from consideration due to the restriction requirement.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

This will acknowledge receipt in re filing of:

1. Transmittal Form w/Certificate of Mailing
2. Fee Transmittal for FY 2004 w/Certificate of Mailing
3. Change of Correspondence Address w/Certificate of Mailing
4. Amendment w/Certificate of Mailing
5. Check No. 8860 in the amount of \$86.00 Extra Independent Claim Fee

In re PATENT application of

Inventor: Dieter BUSCH et al.

Serial No. 09/924,870

Filed: 08/09/2001

For: PROCESS AND DEVICE FOR DETERMINING THE ALIGNMENT OF A
BODY WITH REGARD TO A REFERENCE DIRECTION

Due: 11/08/2003

DOCKET NO. 741124-77

DSS:kmm

October 28, 2003

PLEASE DATE STAMP AND RETURN

THIS DOCUMENT HAS VISIBLE AND INVISIBLE FLUORESCENT FIBERS - VIEW UNDER BLACK LIGHT - TRUE WATERMARK IN PAPER - HOLD TO LIGHT TO VIEW

NIXON PEABODY LLP
ATTORNEYS AT LAW
PATENT DISBURSEMENT ACCOUNT
8180 Greensboro Drive
Suite 800
McLean, VA 22102

CHASE MANHATTAN BANK, N.A.
ROCHESTER, NY

8860

10/28/2003

8047
223

PAY Eighty-six Dollars 00/100-- \$86.00

PAY EXACTLY

TO THE ORDER OF COMMISSIONER FOR PATENTS AND TRADEMARKS

741124-77

Kathleen M. McManus

DOCUMENT CONTAINS VOID PANTOGRAPH AND MICRO-PRINT SIGNATURE LINE - MAGNIFY TO VIEW

⑈008860⑈ ⑆022300173⑆512060452⑈